

ESTTA Tracking number: **ESTTA242688**

Filing date: **10/15/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	LOEST & McNAMEE, INC.
Granted to Date of previous extension	10/15/2008
Address	PO Box 7436 Philadelphia,, PA 19101 UNITED STATES
Attorney information	Paulette R. Carey Buchman Law Firm, LLP 510 Thornall Streetsuite 200 EDISON, NJ 08837 UNITED STATES prcarey@buchmanlaw.com Phone:732-632-6060

Applicant Information

Application No	77247611	Publication date	06/17/2008
Opposition Filing Date	10/15/2008	Opposition Period Ends	10/15/2008
International Registration No.	NONE	International Registration Date	NONE
Applicant	Allen, Shaun Roberts P.O. Box 12133, Ahuriri Napier, NEW ZEALAND		

Goods/Services Affected by Opposition

Class 033. All goods and services in the class are opposed, namely: wines, spirits, liqueurs alcoholic beverages other than beers
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2906981	Application Date	06/14/2002
Registration Date	11/30/2004	Foreign Priority Date	NONE

Word Mark	FERN
Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2003/06/00 First Use In Commerce: 2003/07/00 Wines

Attachments	76420379#TMSN.gif (1 page)(bytes) 10.15.08 Filed FERN Notice of Opp.pdf (4 pages)(127023 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Paulette R. Carey/
Name	Paulette R. Carey
Date	10/15/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77247611
Published in the Official Gazette of March 4, 2008

LOEST & McNAMEE, INC.)	Opposition No.
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vs.)	
)	
Shaun Roberts Allen)	
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Assistant Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Opposer, Loest & McNamee, Inc., believes that it will be damaged by registration of the mark shown in Application Serial No. 77247611 and hereby opposes the same. As grounds for opposition, Opposer hereby alleges as follows:

1. Opposer is a Corporation organized and existing under the laws of the State of Pennsylvania with its address at PO Box 7436, Philadelphia, PA 19101.

2. Upon information and belief, Shaun Roberts Allen ("Applicant") is an individual with an address at P.O. Box 12133, Ahuriri, New Zealand.

3. On August 9, 2007 Applicant filed an application in the United States Trademark Office to register the trademark FERNLEAF for use on wines, spirits, liqueurs, alcoholic beverages other than beer in International Class 33 based upon section 44 (e) of the Trademark Act.

4. Opposer is the owner of the United States trademark FERN for use on wines and of registration no. 2906981, which registration is valid and subsisting. A copy of the registration is annexed hereto.

5. The registered mark FERN has been in use in interstate commerce since at least as early as July 2003. Opposer's priority in its mark predates any priority which may be claimed by Applicant.

6. Applicant's applied-for mark is confusingly similar to the registered mark and is likely, when used on or in connection with the goods identified in the Opposed Application, to cause confusion, to cause mistake, or to deceive, and Applicant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. § 1052(d).

7. The goods of Applicant and Opposer's goods are identical or closely related.

8. Opposer will be damaged by Applicant's registration of the mark shown in the Opposed Application because registration would give Applicant *prima facie* evidence

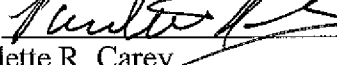
of its ownership of an exclusive right to use a mark that is confusingly similar to the registered mark, which rights could interfere with Opposer's continued use of the mark.

WHEREFORE, Opposer prays for a judgment sustaining this opposition refusing registration of the mark shown in Application Serial No. 77247611.

Dated: October 15, 2008

Respectfully Submitted,

BUCHMAN LAW FIRM, LLP
Attorneys for Opposer

By: 
Paulette R. Carey
510 Thornall Street, Suite 200
Edison, NJ 08837
(732) 632-6060

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2008, I served the foregoing Notice of Opposition by delivering a copy to the United States Postal Service, as first class mail postage prepaid in an envelope addressed to:

John A. Galbreath
Galbreath Law Offices
2516 Chestnut Woods Ct.
Reistertown, MD 21136-5523


Michelle Turner

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,906,981

Registered Nov. 30, 2004

**TRADEMARK
PRINCIPAL REGISTER**

FERN

LOEST & MCNAMEE, INC. (PENNSYLVANIA
CORPORATION)
PO BOX 7436
PHILADELPHIA, PA 19101

FIRST USE 6-0-2003; IN COMMERCE 7-0-2003.

SN 76-420,379, FILED 6-14-2002.

FOR: WINES, IN CLASS 33 (U.S. CLS. 47 AND 49). PAULA MAHONEY, EXAMINING ATTORNEY